

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: LOUISIANA

LIENS AND ADJUSTMENTS OR RECOVERIES

1. The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

NOT APPLICABLE

2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR §433.36(f):

NOT APPLICABLE

3. The State defines the terms below as follows:

- o estate - is defined as the gross estate of the deceased as determined for federal estate taxes.
- o individual's home - is defined as the primary place of residence of the deceased recipient prior to entry into a nursing facility and on which homestead exemption was claimed.
- o equity interest in the home -

NOT APPLICABLE

- o residing in the home for at least one or two years on a continuous basis, and

NOT APPLICABLE

- o lawfully residing.

NOT APPLICABLE

STATE <u>LOUISIANA</u>	A
DATE REC'D <u>JAN 02 1996</u>	
DATE APP'D <u>JAN 26 1996</u>	
DATE EFF <u>OCT 01 1995</u>	
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4. The State defines undue hardship as follows: Compelling circumstances which would result in placing an unreasonable burden on surviving spouse and/or a dependent. Undue hardship may be considered to exist in situations wherein:

- 1) The estate is the sole income-producing asset of the survivors and income is limited (e.g., a family farm or other family business which produces a limited amount of income when the farm or business is the sole asset of the survivors);
- 2) Recovery would result in survivor(s) necessity to apply for and become eligible for public assistance/Medicaid;
- 3) Other compelling circumstances would result in placing an unreasonable burden on survivors.

Undue hardship does not exist if the individual created the hardship by resorting to estate planning methods under which the individual divested assets in order to avoid estate recovery.

If the individual obtained estate planning advice from legal counsel and followed this advice, the resulting financial situation does not qualify for an undue hardship waiver.

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:

Upon receipt of waiver of estate recovery based on claim of hardship, the Bureau will allow fifteen (15) days for receipt of hardship documentation from executor/legally authorized representative or heir.

Upon receipt of the required documentation of hardship, the Bureau will review the documentation and make a determination on whether undue hardship does in fact exist;

If it is determined that undue hardship does not exist, the Bureau will notify the legally authorized representative or heir of the determination and of the right to appeal.

The waiver determination hearing and appeal request will be processed by the Department of Health and Hospitals, Bureau of Appeals.

6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):

The Medicaid agency balances and weighs that which it may reasonably expect to recover against the costs in legal time and litigation associated with the recovery process. Recovery would not be considered cost effective when the estate consists of \$500 or less. Recovery is deemed to be cost effective when the amount reasonably expected to be recovered exceeds the cost of recovery by an amount equal to or greater than \$500.

7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

- 1) The Bureau mails advance notice advising executor/legally authorized representative or heir of intent to recover. The notice must include:  
a) the action the State intends to take; b) the reason for the action;

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- c) the individual's right to a hearing; d) the procedure for requesting a hearing; e) the time frames involved; f) the right to and procedure for applying for a hardship waiver; and the amount for which recovery is sought.
- 2) The Bureau allows thirty (30) days for receipt of hardship waiver requests.
  - 3) Upon receipt of waiver request, the Bureau allows fifteen (15) days for receipt of hardship documentation from executor/legally authorized representative or heir.
  - 4) The Bureau submits all required documentation to Bureau staff or its designee responsible for making a determination of hardship.
  - 5) The Bureau notifies executor/legally authorized representative or heir of determination and of right to appeal within forty-five (45) days of receipt of all required documentation.

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